ASSOCIATION OF
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August 24, 2010

Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

227684

Re: Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures—Productivity Adjustment

Ex Parte No. 290 (Sub-No.5), Quarterly Rail Cost Adjustment Factor (2010-2)

227686

Dear Ms. Brown:

Attached please find the reply comments of the Association of American Railroads (AAR) for filing in the above proceedings.

Respectfully submitted,

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Attachments

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 290 (Sub – No.4)

RAILROAD COST RECOVERY PROCEDURES—PRODUCTIVITY ADJUSTMENT

STB Ex Parte No. 290 (Sub – No.5) (2010-2)

QUARTERLY RAIL COST ADJUSTMENT FACTOR

REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

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QUARTERLY RAIL COST ADJUSTMENT FACTOR

REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

In response to the June 11, 2010 Notice from the Surface Transportation Board ("Board") in the above proceeding, opening comments were filed by the Association of American Railroads ("AAR") and the Western Coal Traffic League ("WCTL").[1] The AAR, in its reply comments, responds to the various contentions made by WCTL.

In summary, the comments of WCTL opposing the Board's correction of its computational error in calculating the 2007 productivity adjustment (and attendant

[1] On July 12, 2010 (the original due date set for opening comments in this proceeding) and July 13, 2010, two Canadian shippers, West Fraser Mills, Ltd ("West Fraser Mills") and Canadian Forest Products Ltd. (Canfor), filed respective letter requests seeking additional time "so that they may review what impact, if any, a restatement of the 2007 productivity adjustment and other affected calculations would have on their businesses." (See Board Decision served July 20, 2010, Slip op. at 1.) In its July 20, 2010 decision, the Board granted the requests of West Fraser Mills and Canfor and extended the due date for their initial comments to July 26, 2010 (and the date for all parties' reply comments to August 24, 2010). Neither West Fraser Mills nor Canfor filed comments by the extended due date set by the Board of July 26, 2010.

In an untimely letter filed with the Board on August 9, 2010, Canfor noted that "the re-stating of the 2003-7 averaging period [i.e., Board correction of its ministerial error in calculating the 2007 productivity adjustment (and attendant RCAF-A and RCAF-5 values)] would have a minimal impact on the historical rate levels" and "is inconsequential." Canfor letter to the Board (dated August 6, 2010). To the extent that the Board gives any consideration to assertions in Canfor's late filed letter, the AAR's Reply addresses those assertions as well.

RCAF-A and RCAF-5) values, are without merit and are contrary to Board precedent. The Board has inherent authority to correct its ministerial error in calculating the 2007 productivity adjustment (and attendant RCAF values) and a clear duty to do so. Moreover, even if "detrimental reliance" factors were deemed relevant to the Board's ministerial duty to correct a computational error--and they are in fact not relevant—WCTL has made no showing of "detrimental reliance" sufficient to overcome the Board's duty to correct such computational error.

Discussion

I. The Comments of WCTL Completely Ignore the Board's Purely Ministerial Role in the RCAF Calculation Process As Well As Clear Agency Precedent Supporting a Restatement of the 2007 Productivity Adjustment (and Attendant RCAF Values) to Correct a Computational Error

WCTL argues that on "numerous occasions in the past" WCTL requested the Board (or the ICC) to "correct its published values for such matters as the RCAF, the cost of capital, etc., to improve the accuracy of those values;" but that the Board (and the ICC) "generally sided" with the AAR in opposing WCTL's efforts with "a typical explanation...that the claimed need for accuracy must somehow give way to settled expectations." WCTL Comments at 2. Based on these assertions, WCTL urges that consistency with previous agency decisions declining to restate the RCAF as requested by WCTL requires that the Board deny the corrective adjustments to the 2007 productivity adjustment in this proceeding. WCTL Comments at 3-5.

WCTL's argument opposing correction of the Board's computational error is without merit. *All* of the proceedings cited by WCTL in support of its argument against a "corrective restatement" of the RCAF involve agency *rulemaking decisions* not to retroactively apply *agency changes in policy or methodology* to prior RCAF value

determinations.[2] *None* of the decisions involved agency correction of a purely ministerial error as occurred with respect to the Board's calculation of the 2007 productivity adjustment.

As noted in the AAR's initial comments, the role of the Board in the RCAF process is – as the Board expressly recognizes – purely ministerial. See *Productivity Adjustment-Implementation*, 1 S.T.B. 739, 746 (1996). In carrying out its ministerial role, the Board's function is to simply calculate the RCAF-A and RCAF-5 values, and the annual productivity adjustment upon which the RCAF-A and RCAF-5 values are based, with diligence in determining mathematically correct values. That ministerial role, the AAR submits, requires the Board to properly calculate and verify its annual productivity adjustment and RCAF calculations [3] and to correct any computational errors that are found. See July 12, 2010 AAR Comments at 7-8, 11.

WCTL's approach would have the Board disregard its ministerial role in the RCAF calculation process and instead have the Board improperly view correction of a computational error as somehow equivalent to a *policy or methodological* change – which it is emphatically not.

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[2] The rulemaking cases cited by WCTL include *Railroad Cost Recovery Procedures*, 5 I.C.C. 2d 434 (1989), *aff'd sub nom. Edison Elec. Inst. v. ICC*, 969 F. 2d 1221 (D.C. Cir. 1992) (requiring the adjustment of the quarterly RCAF for a measure of productivity but declining to restate the RCAF to include historical accumulated productivity since 1984); Ex Parte No. 290 (Sub. No. 2), *Railroad Cost Recovery Procedures* (ICC decisions decided Apr. 19, 1982 and Nov. 21, 1984) (denying requests to order RCAF-based rates to decrease when the RCAF decreased); *Railroad Cost Recovery Procedures*, 3 I.C.C. 2d 60 (1986), *aff'd sub nom. Alabama Power Co. v. ICC*, 852 F. 2d 1361 (D.C. Cir. 1988) (ICC decision requiring that rates in cost recovery tariffs be reduced when costs decline, and that future RCAF calculations be adjusted for prior "forecast errors," but establishing December 1985 floor for retroactive rollbacks and declining to restate the RCAF for accumulated forecast error); and *Productivity Adjustment-Implementation*, 1 S.T.B. 739 (1996) (adopting the RCAF-5 and declining to restate the RCAF-A to incorporate past productivity gains that would not be fully recognized as a result of the Board's adoption of a five-year averaging period for the RCAF-A.)

[3] Only the Board is in a position to verify its output index calculation with respect to the determination of the annual productivity adjustment.

The Board (and the ICC before it) has repeatedly stressed in RCAF proceedings – including the specific rulemaking proceedings relied on by WCTL – that there is a clear distinction between agency correction of a ministerial error (such as a computational error) in calculating the RCAF and an agency change of the RCAF to reflect changes in agency policy or methodology. With respect to purely ministerial errors, the Board has recognized that corrective adjustments to the RCAF are appropriate (and in fact has made a corrective adjustment to a previously published RCAF value to correct for computational error).[4] However, the Board treats changes in agency policy or methodology as wholly distinct from "ministerial errors" and has generally declined to restate otherwise "correct" RCAF values.[5]

Thus, there is clear agency precedent for making corrective adjustments to previously published RCAF values to correct for agency computational errors,[6] and

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[4] See Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed) (decided June 8, 1984) (Attachment B to AAR's July 12, 2010 comments). In that decision, the ICC ordered an adjustment to the RCAF to compensate for a .001 computational error in the first quarter 1984 RCAF.

[5] See July 12, 2010 AAR comments at 8-11; see also *Railroad Cost Recovery Procedures—Productivity Adjustment,* 1989 WL 239385 (I.C.C.) (1989) (served Sept. 19, 1989), supra (ICC decision distinguishing agency computational errors from methodological changes and recognizing propriety of correcting RCAF for computational errors); *Railroad Cost Recovery Procedures,* 5 I.C.C. 2d 434, 470 (1989), *aff'd sub nom. Edison Elec. Inst. v. ICC,* 969 F. 2d 1221 (D.C. Cir. 1992) (ICC decision distinguishing agency change in policy from correction of agency error in law or method); *Productivity Adjustment-Implementation,* 1 S.T.B. at 745-746 (STB decision noting the ICC's "consistent policy of applying *regulatory changes* to the RCAF prospectively only, without restating the index" and following that policy in adopting the RCAF-5). (Emphasis added)

[6] As further noted in AAR's initial comments, the courts and other federal agencies also make clear distinctions between ministerial errors and other types of error and clearly recognize an agency's inherent authority under the Administrative Procedure Act to correct ministerial errors in otherwise final decisions "such as a mathematical miscalculation." See, e.g., *In the Matter of Applications of County of San Mateo, California,* 2001 WL 1041534 (F.C.C.) (2001); see also, *Am. Trucking Ass'ns v. Frisco Transp. Co.,* 358 U.S. 133, 145 (1958) (ICC authority to correct inadvertent ministerial error in issuing certificates of authority without restrictions upheld); *City of Long Beach v. Dep't of Energy,* 754 F.2d 379, 387 (Emer. Ct. App. 1985) (Department of Energy decision requiring party to disgorge revenues obtained through agency computational error in DOE petroleum pricing approval decision upheld); *Chlorine Inst., Inc. v. Occupational Safety & Health Admin.,* 613 F. 2d 120 (5th Cir. 1980) (OSHA correction of clerical mistake in publication of standards upheld). The Board (and the ICC) have also in numerous other types of proceedings distinguished computational errors as especially warranting Board correction despite the

correction of computational errors has been repeatedly distinguished from non-ministerial RCAF "corrections" by both the ICC and the Board.[7]

II. Contrary to WCTL's Assertion, the Board Had Not "Departed from Established Norms" When It Approved the AAR's Use of Corrected 2007 Productivity Adjustment Factors for Purposes of the 2Q2010 Calculation of the RCAF-A and the RCAF-5

WCTL asserts that the Board, in accepting the AAR's use of corrected 2007 productivity adjustment factors (PAFs) in calculating the 2Q2010 RCAF-A and RCAF-5 values, "departed from its established norms" in its March 31, 2010 decision "when it published RCAF-A and RCAF-5 values for 2Q10 that corrected for the accumulated overstatement in 2007 productivity recognized in *2008 Productivity Adjustment*." WCTL Comments at 4.

First, with respect to WCTL's concerns over the Board's March 31, 2010 decision correcting the erroneous productivity factors for the 2Q2010 and future RCAF calculations, *WCTL did not challenge the Board's decision in the 2Q2010 RCAF proceeding.* The time to challenge the Board's March 31, 2010 decision has long since passed, and WCTL's contention should be rejected if for no other reason than it is clearly procedurally untimely.

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finality of a prior Board decision (e.g., Offers of Financial Assistance (OFA) proceedings; SAC rate decisions). See July 12, 2010 AAR Comments at 10-11.

[7] As is apparent from the ICC's decision in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed) (decided June 8, 1984), the agency expressed no doubt that it had the ministerial authority and ministerial duty to make a "remedial adjustment" to the previously published RCAF value to correct for the computational error. As is also apparent from the decision itself, the corrective adjustment was supported by both *shippers and the AAR* and the propriety of the adjustment was not even a matter of contention. See also, *Railroad Cost Recovery Procedures—Productivity Adjustment,* 1989 WL 239385 (I.C.C.) (1989) (served Sept. 19, 1989), supra (specifically referencing the ICC's June 8, 1984 decision as a "1984 adjustment to the RCAF [that] corrected a computational error in the RCAF published two quarters earlier..." and similarly expressing no doubt that such a ministerial correction was within the agency's authority and was appropriate). *Id* at *3.

As to the substantive merits of WCTL's arguments, as noted supra, the Board has inherent authority to correct ministerial errors (such as computational errors) in its decisions, and the Board has in fact recognized and exercised that authority in the context of correcting RCAF computational errors. The Board thus clearly followed "established norms" (as well as the only rational course) in correcting its computational error for purposes of the 2Q2010 RCAF calculation.

Further, as noted in the AAR's March 30, 2010 filing, the AAR used the Board's corrected 2007 output index data to calculate the relevant productivity adjustment factors (and RCAF-A and RCAF-5 values that resulted from use of the corrected productivity adjustment factors) for the 2Q2010 filing because the Board's *current 2Q2010 RCAF calculation* was at issue (as well as *future* RCAF calculations). As explained by the AAR, continued use of the erroneous productivity adjustment factors resulting from the Board's erroneous calculation of productivity for the 2003-2007 period, in the absence of correction, affected not only immediate past quarters, but also the *current* 2Q2010 calculation of the RCAF-5 and the RCAF-A and would also be carried forward in *future* productivity calculations.[8] The Board thus had no other rational course but to correct the erroneous productivity factors resulting from its computational error to avoid also basing its current (and future) RCAF decisions on a computational error.

III. The "Detrimental Reliance" Factors Asserted by WCTL Do Not Change the Board's Ministerial Duty to Correct Its Computational Errors in Calculating the 2007 Productivity Adjustment (and Attendant RCAF-A and RCAF-5 Values)

WCTL contends that "detrimental reliance on the Board's published productivity-adjusted RCAF values" is a relevant factor weighing against adoption of the necessary

[8] See March 30, 2010 AAR Comments at 4, A1-A4.

corrections. WCTL Comments at 8. However, contrary to WCTL's assertion "detrimental reliance" factors are not determinative of the Board's ministerial duty to correct its computational error in this proceeding and, even if it were determinative, there has been no showing by WCTL of "detrimental reliance" sufficient to justify a Board refusal to make the corrective adjustments sought by the AAR.

As noted in the AAR's initial comments, the law is clear that, despite even significant "detrimental reliance" by a party on an agency's prior decision, the agency is not precluded from revisiting and correcting its prior decision once it becomes aware of undisputed ministerial errors (such as computational errors). See July 12, 2010 AAR comments at 11-12; see also, e.g., *King v. Norton,* 160 F.Supp.2d 755, 761 (E.D.Mich.2001) (mathematical error) ("detrimental reliance by a party will not prevent an agency's reconsideration of a decision if the initial decision is in fact erroneous"); *Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122, 144 (D.D.C. 2002) (*accord*). Indeed, it is "axiomatic" that agencies have inherent authority to reopen decisions to correct mathematical or inadvertent ministerial errors even though objecting parties may have significantly relied upon the erroneous decisions. See, e.g., *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) (ICC authority to correct inadvertent ministerial error in issuing certificates of authority without restrictions upheld: "*It is axiomatic that courts [and the ICC] have the power and the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake*"); *Howard Sober, Inc. v. I. C. C.*, 628 F.2d 36, 41 (D.C. Cir. 1980) (*accord*); *City of Long Beach v. Dep't of Energy*, 754 F.2d 379, 387 (Emer. Ct. App. 1985) (correction of computational error upheld); see also *Chlorine Inst., Inc. v.*

Occupational Safety & Health Admin., 613 F. 2d 120, 123 (5th Cir. 1980) (OSHA correction of clerical mistake in publication of standards upheld even though error uncovered seven years later).

Moreover, the types of "detrimental reliance" asserted by WCTL, even if deemed relevant, are clearly insufficient to justify a refusal by the Board to exercise its clear ministerial duty to correct its computational error in calculating the 2007 productivity adjustment (and attendant RCAF-A and RCAF-5 values) as discussed supra.

WCTL asserts three "forms" of "detrimental reliance" that do not have substantive bases. WCTL Comments at 6-7.

WCTL first contends that "[t]he Board's standard stand-alone cost discounted cash flow model...relies [sic] and incorporates the Board's calculation of RCAF productivity-adjusted values, typically as measured by Global Insight."[9] WCTL Comments at 6. While the RCAF-A is used in SAC cases, the AAR noted in its initial comments that it "is unaware of any prior or current SAC cases that would be significantly affected by the Board's correction of its computational error."[10] Moreover, WCTL itself fails to cite to any specific SAC proceeding that in fact would be significantly affected by the Board's correction of its computational error. Mere general reference to use of the RCAF-A in SAC cases, bereft of any analysis pertaining to the

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[9] IHS Global Insight is a world-wide consulting firm that provides economic and financial analysis, forecasting, and other services to government agencies, industries and other clients. The Board uses Global Insight forecasts in SAC cases for the purpose of forecasting operating expenses of the SARR over the applicable forecast period. See, e.g., Docket No. 42057, *Public Service Company of Colorado D/B/A Excel Energy v. BNSF Railway* (served June 7, 2004), Slip op. at 34.

[10] See July 12, 2010 AAR Comments at 4, n. 2.

impact of the Board's computational error in the context of a specific SAC proceeding, is not proof of significant detrimental reliance.[11]

Secondly, WCTL generally asserts that "the RCAF-A is utilized to control railroad rates in Canada." WCTL Comments at 6. WCTL's assertion is predicated on a CN Consent Agreement with the Competition Bureau of Canada relating to CN's acquisition of the British Columbia Railway Company ("BCOL") which requires CN to maintain "Open Gateway Tariffs" with Burlington Northern Santa Fe Corporation (BNSF), the Canadian Pacific Railway ("CP") and Union Pacific Corporation ("UP") for traffic "destined to, or originating from" the BCOL line, "the rates for which are subject to adjustment by the RCAF-A." WCTL Comments at 6-7.[12]

Again, WCTL's mere general reference to use of the RCAF-A as a rate escalation clause under CN's Consent Agreement with the Competition Bureau of Canada is wholly insufficient to establish any degree of "detrimental reliance" for purposes of this proceeding.

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[11] Moreover, as AAR further noted in its initial comments, "[i]f any such situations [of "detrimental reliance"] should arise, either party to a rate prescription may file for reopening on grounds of material error under the Board's existing reopening standards" and a party would be able to raise any claims of "detrimental reliance" in the context of a specific proceeding. *Id.* at 12.

[12] WCTL's reference is to a July 2, 2004 Consent Agreement [available at the Competition Bureau of Canada website (WCTL Comments, at p.6, n. 7)] entered into by CN with the Competition Bureau of Canada, under which CN, as a condition of its acquisition of certain assets of the BCOL, agreed to maintain (among other specified commitments) "Open Gateway Tariffs" with BNSF, UP, and CP for traffic "destined to, or originating from, ...rail shipping facilities located on the BCOL line of railway...." See Consent Agreement, Article 3.2 (and Schedule B, Item 5). Under the Consent Agreement, the "zone rates and surcharges" set forth in the attached tariffs are to be "adjusted annually, using the RCAF-A Index." See Consent Agreement, Article 3.3. Article 3.3. further provides that "There shall be no ceiling on the amount of any rate increases that may result from the annual application of the RCAF-A Index under this paragraph." (The "RCAF-A Index" is defined under the Consent Agreement as "the Rail Cost Adjustment Factor –adjusted for productivity gains, published by the AAR in its Railroad Cost Indices Publication available on the AAR website." See CN Consent Agreement, Schedule A, Definitions.)

First, it is unclear how WCTL would even have standing to claim "detrimental reliance" based on the CN Consent agreement. It is not a party to the agreement and fails to even allege that it or its members are in any way affected by the agreement. (Moreover, two large Canadian shippers, who *could* be potentially affected under the CN Consent Agreement, declined to file comments in this proceeding claiming detrimental reliance.)[13]

Further, as a general matter, the essential function of the Board under the RCAF procedures is simply to provide private parties with a "neutral and authoritative benchmark" (whether the RCAF-A or the RCAF-5) that may be used for inflation-based escalation of private transportation contract rates. See *Productivity Adjustment-Implementation*, 1 S.T.B. at 746. The intended purpose of the RCAF-A is not "to control rail rates in Canada" and that non-U.S. "regulatory" purpose is wholly irrelevant to this proceeding. Moreover, the CN Consent Agreement, by its own terms, is governed by Canadian law – not the ICCTA – and contains mandatory arbitration provisions to govern indexing and billing disputes.[14] Any "detrimental reliance" assertions can accordingly be dealt with under Canadian law and the arbitration provisions of the CN Consent Agreement as specifically required under the terms of the CN Consent Agreement. Indeed, any intervention by the Board with respect to determining the effect of a

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[13] One of those shippers (Canfor) actually filed an untimely letter with the Board noting that correction of the Board's ministerial error would have an "inconsequential" effect on rates established under the CN Consent Agreement. See note 1, supra.

[14] Article 1.5 of the CN Consent agreement provides that it shall be governed by and interpreted and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein." Schedule B, Item 50 of the CN/BNSF and CN/UP "Open Gateways Tariff" specifically provide that "Any dispute resulting from failure to resolve [an indexing issue] shall be submitted to binding commercial arbitration...." Schedule B, Item 45 of the CN/BNSF, CN/CP, and CN/UP "Open Gateways Tariff" further provide that any billing disputes "shall be submitted to commercial arbitration...."

corrective RCAF restatement on the CN Consent Agreement under Canadian law would be beyond the Board's regulatory authority and wholly inappropriate.

WCTL's third argument for "detrimental reliance" is one paragraph of generalized assertions relating to contracts that may use the RCAF-A to some extent. To the extent that WCTL is claiming "detrimental reliance" on the basis of RCAF-A contract rate adjustments, the issue of the effectiveness of the Board's correction of erroneous 2007 productivity values on the contractual dealings of the parties (and whether an individual party has detrimentally relied on prior calculations) is determined by the nature of the parties' agreement and the applicable state law. Such matters are beyond the Board's regulatory authority and need not, and should not, be addressed in this proceeding.

Moreover, any general "reliance" on the RCAF mechanism as asserted by WCTL would presumably be reasonably predicated on the assumption that RCAF values would be correctly calculated by the Board, not that one party or another should be able to take advantage of a computational error should it occur.

With respect to WCTL's contention that the RCAF indices are used to determine the "extent to which changes in rates have tracked or will track changes in costs," WCTL further notes that "the Christensen Study prepared for the Board used the RCAF-A in measuring the extent to which changes in rates had tracked changes in costs,"[15] and that

[15] On November 3, 2008, the Board released an independent study prepared for the Board by Christensen Associates, Inc., *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition (November 2008) ("Christensen Study").* The *Christensen Study* was predicated in large part on analysis of the relationship between railroad price increases and marginal cost and input price increases (including productivity growth trends as measured by the RCAF-A). See *Christensen Study*, Executive Summary at ES-16-18. On February 1, 2010, the Board released an update of the *Christensen Study* using previously unavailable 2007-2008 data, *An Update to the Study of Competition in the U.S. Freight Railroad Industry, Final Report (January 2010) ("Updated Study").* (As the Board noted in a February 1, 2010 press release, the *Updated Study* essentially confirmed the findings of the

"Global Insight also publishes a forecast for the RCAF-A, indicating that there is some commercial demand for the information." *Id.* If outside consultants such as Christensen Associates and Global Insight use the RCAF-A in preparing studies for the Board pertaining to the relationship between rail carrier rate increases and rail carrier cost increases, or in preparing RCAF-A forecasts for use by the Board in SAC cases pertaining to projecting variable costs of the SARR into future years, such parties, and the Board itself, have a clear stake in ensuring that the RCAF-A values used in their analyses and forecasts are *correct values* as calculated by the Board. Indeed, in light of such considerations (and as reflected in agency precedent), it is undeniable that the Board has a clear duty to the transportation community and to the public to ensure that its calculations of the RCAF-A are correct and that any ministerial errors in calculation are corrected upon discovery.

In short, even if deemed relevant, the "detrimental reliance" factors cited by WCTL and the other parties clearly weigh *in favor* of the Board's correction of its ministerial error in calculating the 2007 productivity adjustment (and attendant RCAF-A and RCAF-5 values), not in perpetuating or memorializing that computational error.

Conclusion

The AAR urges the Board to correct its computational error in the 2007 productivity adjustment by: (1) restating the 2007 productivity adjustment to conform to

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original *Christensen Study* and found that rail rate increases were driven by fluctuating fuel prices and other costs and did not appear to reflect a greater exercise of railroad market power over "captive" shippers.)

the correct calculation and (2) restating any quarterly RCAF-A and RCAF-5 calculations (as set forth in Attachment A) so that they also conform to the corrected 2007 productivity adjustment.

Respectfully submitted,

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